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Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** DGS Contract Services

**File:** B-243647.2

**Date:** September 18, 1991

Rickie Day for the protester.  
Deborah D. Wellborn, Esq., Department of Housing and Urban Development, for the agency.  
Henry J. Ricardo, and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency improperly canceled solicitation after receipt of best and final offers is denied where the decision to cancel was reasonably based on agency concerns that the integrity of the procurement process appeared to have been undermined by improper conduct of an agency procurement official.

### DECISION

DGS Contract Services (DGS) protests the partial cancellation of request for proposals (RFP) No. 17-91-053 by the Department of Housing and Urban Development (HUD). The RFP sought proposals to provide property management and related services for single family properties which are owned by, or are in the custody of, HUD. These properties are located in three geographic areas, but only Area 5 is the subject of this protest.<sup>1/</sup> The protester also alleges that HUD conducted an improper auction, and seeks award of the contract and recovery of its proposal preparation and protest costs.

We deny the protest.

<sup>1/</sup> The RFP provided for separate awards for each of the three areas. HUD awarded contracts for Areas 3 and 4 because the offerors who competed for these areas were not affected by the actions which gave rise to the agency's concerns with the conduct of the procurement.

HUD received eight offers in response to this RFP, three of which were determined to be technically acceptable and within the competitive range for Area 5. The contracting officer contacted all three offerors, telling two of them that their prices were significantly above the government estimate, and telling the protester that its price was significantly below the government estimate. Each was advised to reconsider its price before submitting a best and final offer (BAFO). In response to these discussions, the high offerors lowered their prices by 7 percent and 33 percent respectively, and the protester, whose initial offer had been low, raised its price by 31 percent. As a result, the protester was displaced and the firm which cut its price by 33 percent became the low offeror. After BAFOs were evaluated, the agency canceled the solicitation for Area 5 because of concern about apparent improprieties in the procurement process. DGS alleges that HUD improperly canceled the solicitation because it lacked a compelling reason to do so.

In a negotiated procurement, an agency need only have a reasonable basis to cancel a solicitation after receipt of proposals, as opposed to the cogent and compelling reason required for cancellation of an invitation for bids (IFB) after receipt of sealed bids. See Federal Acquisition Regulation (FAR) §§ 15.608(b) and 14.404-1; ACR Electronics, Inc., B-232130.2; B-232130.3, Dec. 9, 1988, 88-2 CPD ¶ 577.

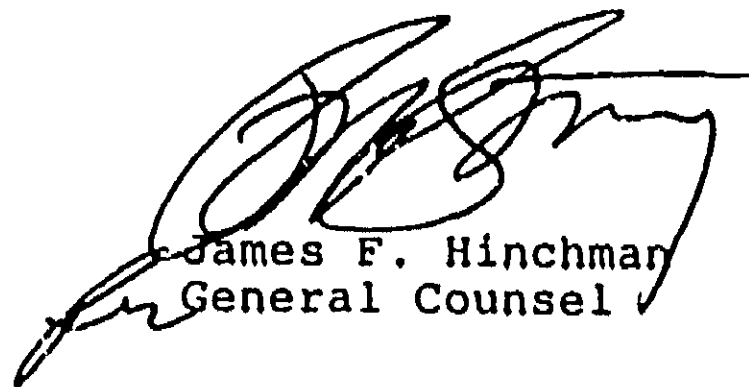
Here, we find that HUD had a reasonable basis to cancel. The record shows that there was evidence of questionable actions by the contracting officer with respect to both the award of prior contracts to the incumbent and the administration of these contracts. Further, there was evidence of a close, ongoing personal relationship between the contracting officer and the incumbent. In light of this background and the fact that as a result of the discussions conducted by the contracting officer the protester raised its price significantly while the incumbent lowered its price significantly, so that the incumbent's BAFO was just below the protester's offer, a HUD regional official became concerned that offerors had not been treated fairly and impartially during discussions.<sup>2/</sup> In fact, the protester alleges that during discussions the contracting officer threatened to reject DGS' offer if it did not raise its price. Under these circumstances, we think that the agency could reasonably question whether the contracting officer's actions were intended to "steer" the award to the incumbent, and, to avoid the appearance of impropriety, cancel the RFP and resolicit for Area 5.

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<sup>2/</sup> We will not discuss the details of the possible improprieties since the agency is in the process of conducting an internal investigation into the matter.

The protester asserts that it should be awarded the contract because HUD conducted an improper auction in violation of FAR § 15.610(e)(2). HUD states that the protester's allegations of improper auction were "of particular concern" and were an important factor in the agency's decision to cancel the solicitation. Since DGS' BAFO was not low, and the agency has not yet resolved the question of whether the contracting officer acted improperly, there is no basis for awarding the contract to DGS--the agency's decision to cancel constituted the appropriate corrective action under the circumstances.

The protest is denied. Since we deny the protest, we have no basis for awarding costs to DGS.



James F. Hinchman  
General Counsel